Segal Select Insurance

333 West 34th Street New York, NY 10001-2402
T 212.251.5000 F 212.251.5490 www.segalsi.com

MEMORANDUM

To: Alicia Cochran

From: Angie Begazo
Matthew Jackson
Segal Select Insurance Services

Date: May 2, 2017

Re: **Cyber Liability Insurance**
Industry and Local 338 Pension Fund and Industry & Local 338 Welfare Fund

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Thank you for the opportunity to provide Cyber Liability Insurance quotes for the Trustees' consideration.

We requested quotes from Travelers and Beazley. The quotes are presented in table format following this memo.

Coverage Recommendation

Both carriers offer programs that meet our general scope of coverage criteria, though their individual policies are designed differently. We recommend binding coverage with Travelers based on broad scope of coverage, premium, and admitted status of the carrier. Beazley's scope of coverage is competitive, but the premium is not as competitive as Travelers' premium, and Beazley is a non-admitted carrier in the state of Maryland.

We can support any of the Travelers quotes based on the option of full prior acts coverage, competitive $2,500 retention, and a premium that remains lower than either the Beazley quotations.

In addition to the quotes, please review the attachments regarding:

- ❑ Recommendation Decision Variables
- ❑ Carrier Subjectivities
- ❑ Supplementary Material

Please advise us of the Trustees' decision at your earliest convenience. We are also available to answer any questions or concern you or the Trustees may have.

cc: John Urbank

Recommendation Decision Variables

❑ Financial strength of the carrier

Both carriers are rated at least "A" by A.M. Best. Segal Select can recommend them. For more information on each, please visit their websites at:

Travelers: http://www.travelers.com/
Beazley: http://www.beazley.com/

❑ Scope of Coverage

Cyber Liability offers many insuring agreements, each of which should be reviewed as they provide specific types of coverage. The basic "package" of coverage includes breach response services and expenses (first party exposure) and liability claims that may subsequently arise (third party exposure), but significant differences exist between insuring agreements.

Travelers and Beazley provides three separate limits for First Party Coverages and Third Party Coverages, Breach Notification Services, and Response Coverage Expenses. Beazley enhanced the first party coverages further by offering a third limit of liability specifically for notifications and credit monitoring on a head count basis, rather than a specific dollar amount.

The Traveler options provided Full Prior Acts coverage. The Beazley quotes provide a backdated Retroactive/Prior Acts coverage option.

Travelers provides comprehensive coverage inclusive of an additional 50,000 notifications and coverage for Contingent Business Interruption subject to a $100,000 sublimit. This covers loss due to the impairment of the Fund's operations that is a direct result of a Disruption to an IT Provider's System.

Claim Handling Methodology

Both carriers offer claim handling services that involve either a carrier directed and assisted process or a selection of vendors the insured can interview and select, ideally in advance. For more detailed information on their approaches, please see their insurance company websites.

❑ Limit of Liability

In addition, quotes were received for aggregate limit options of $1-million and $2-million. Within the limit, various sublimits may apply. Travelers and Beazley offer different options that either prevent one claim from depleting the entire limit of liability or provide the option to access the full policy limit should a claim require additional expenses.

❑ Premiums

Both Travelers and Beazley provided competitive premiums based on current market trends. The carriers also provide varying retentions for their coverages, which are similar to deductibles and represent the out-of-pocket costs the Insured must incur prior to the carrier paying loss. Please note, under the various policies all services offered by a cyber liability policy include pre-approved vendors at the carriers' pre-negotiated, discounted rates.

❑ **Carrier Quotes**

Unless directed otherwise, our policy is to request competitive quotes from various carriers. In this evolving cyber liability market, not all carriers are willing to offer a quote. Our recommendation is partially based upon meetings with the carrier to determine the scope of coverage provided and the carrier's commitment to work with Taft-Hartley plans in any claim scenario.

Excess & Surplus Lines Disclosure

The quotes received from Beazley is on an excess and surplus lines basis in most states and in those states the premium would be subject to an excess and surplus lines tax and a filing fee. Typically, an insured purchasing an excess and surplus lines policy has no recourse with the state's insurance department if there are any disputes with the carrier, or the carrier becomes insolvent.

The surplus lines industry is a multi-billion dollar industry, and we recognize the financial strength of these carriers and can support a decision to bind coverage with either one based on broad scope of coverage.

Travelers – Three Separate Limits

Policy Period	Annual	
Admitted Status	Yes	
Retroactive/Prior Acts Coverage	**Full Prior Acts Coverage**	
First Party Expense Coverage & Third Party Liability Coverage		
Crisis Management, Business Interruption, Data Protection, Cyber Extortion, Security & Privacy Liability, Media	$1-million aggregate	$2-million aggregate
Contingent Business Interruption	$100,000 sublimit	$100,000 sublimit
Regulatory Action Defense and Fines & Penalties	$1-million sublimit	$2-million sublimit
Retention/Deductible	**$2,500**	**$2,500**
PCI Fines & Penalties (Only if PCI Compliant)	$500,000	$500,000
Breach Notification Services Coverage		
Required / Voluntary Notifications, Credit/Identity Monitoring, Call Center Services	100,000 notifications	
Retention/Threshold	Required notification of 100 individuals	
Response Coverage Expenses		
Forensics & Legal Expenses	$1-million	$1-million
Retention/Threshold	$0	$0
Premium	$1,611	$2,430

Note: This policy summary is not a legal interpretation of coverage. Cyber Liability is a legal contract that Plan Counsel should review.

Beazley Proposals – <u>Three Separate Limits</u>

<table>
<tr><td>Policy Period</td><td colspan="4">Annual</td></tr>
<tr><td>Admitted Status</td><td colspan="4">Non-Admitted</td></tr>
<tr><td>Retroactive/Prior Acts Coverage</td><td colspan="2">Backdated one year from inception</td><td colspan="2">Full Prior Acts Coverage</td></tr>
<tr><td>First Party Expense Coverage</td><td colspan="4"><u>Separate</u> Limit</td></tr>
<tr><td>Forensics, Legal Expense, Crisis Management, Public Relations, Voluntary Notifications</td><td colspan="2">$250,000 aggregate</td><td colspan="2">$1-million aggregate</td></tr>
<tr><td>Retention/Deductible</td><td colspan="2">$2,500 ($1,250 for Legal Expenses only)</td><td colspan="2">$2,500 ($1,250 for Legal Expenses only)</td></tr>
<tr><td>Breach Notification Services Coverage</td><td colspan="4"><u>Separate</u> Limit</td></tr>
<tr><td>Required Notifications, Credit/Identity Monitoring</td><td colspan="2">50,000 notifications</td><td colspan="2">50,000 notifications</td></tr>
<tr><td>Retention/Threshold</td><td colspan="2">$2,500 as part of First Party Expense retention</td><td colspan="2">$2,500 as part of First Party Expense retention</td></tr>
<tr><td>Call Center Services</td><td colspan="2">90 days, 10,000 calls/day</td><td colspan="2">90 days, 10,000 calls/day</td></tr>
<tr><td>Retention/Threshold</td><td colspan="2">Required notification of 100 individuals</td><td colspan="2">Required notification of 100 individuals</td></tr>
<tr><td>Third Party Liability Coverage</td><td colspan="4"><u>Separate</u> Limit</td></tr>
<tr><td>Security & Privacy Liability, Business Interruption, Data Protection, Cyber Extortion</td><td>$1-million aggregate</td><td>$2-million aggregate</td><td rowspan="3">$1-million aggregate</td><td rowspan="2">$2-million aggregate</td></tr>
<tr><td>Regulatory Defense/Penalties Coverage</td><td>$500,000 sublimit</td><td>$500,000 sublimit</td></tr>
<tr><td>PCI Fines & Penalties (Only if PCI Compliant)</td><td>$100,000 sublimit</td><td>$100,000 sublimit</td><td>$1-million sublimit</td></tr>
<tr><td>Retention/Deductible</td><td>$5,000</td><td>$5,000</td><td>$5,000</td><td>$5,000</td></tr>
<tr><td>Premium</td><td>$1,750 + Surplus lines taxes and fees</td><td>$2,800 + Surplus lines taxes and fees</td><td>$2,450 + Surplus lines taxes and fees</td><td>$3,920 + Surplus lines taxes and fees</td></tr>
</table>

Note: This policy summary is not a legal interpretation of coverage. Cyber Liability is a legal contract that Plan Counsel should review.

Carrier Subjectivities

This section summarizes the additional information Travelers, Beazley, and Chubb have requested.

Travelers

- Signed and dated application.

Beazley

- Completed and signed Beazley application, **dated within 60 days prior to the inception date**;
- Surplus lines affidavit – TBD.

Travelers Endorsements

Retroactive Date	N/A
Pending & Prior Litigation Exclusion	Inception date
Removal of Short-Rate Cancellation Endorsement	√
Federal Terrorism Risk Insurance Act Disclosure	√
Sanction Limitation and Exclusion Clause	√
Fines and Penalties/Consumer Redress Funds/Payment Card Expenses Insuring Agreement Endorsement - Including Chargebacks	√
Louisiana Changes Endorsement	√
Global Coverage Compliance Endorsement	√
Impacted Persons and Forensics and Legal Expenses (Outside the Limit) Endorsement	√
Privacy Policy Endorsement	√

Beazley Endorsements

Retroactive Date	Backdated one year from inception date or none if full prior acts coverage is elected
Pending & Prior Litigation Exclusion	Inception date
Radioactive Contamination	√
Nuclear Incident Exclusion Clause-Liability-Direct	√
Sanction Limitation and Exclusion Clause	√
Amend Exclusion T. – Cyber Terrorism	√
First Party Computer Security Coverage Endorsement	√
AmWins Amendatory Endorsement	√
Amend Insured to include IC, Leased and Seasonal	√
Trustee Endorsement	√
Payment Card Industry (PCI) Fines & Penalties Coverage	Not covered – only available if affirmatively PCI compliant.

Glossary of Terms – The statements below are not legal definitions. In all instances, the definitions contained within the policy will control coverage.

Breach Resolution and Mitigation Services means a credit monitoring, identity monitoring, or other solution offered to Notified Individuals.

Call Center Services means the provision of a call center to answer calls during standard business

Extortion means a threat to breach Computer Security in order to alter, destroy, damage, delete, or corrupt any Data Asset.

Forensics means reasonable and necessary expenses incurred by the Insured Organization to investigate the source or cause of the failure of Computer Security to prevent a Security Breach.

First Party Legal Services means fees for services charged by an attorney to determine the applicability of and actions necessary for the Insured Organization or to provide necessary legal advice to the Insured Organization.

PCI Fines, Expenses, and Costs means the direct monetary fines, penalties, reimbursements, fraud recoveries, or assessments owed by the Insured Organization under the terms of a Merchant Services Agreement.

Public Relations and Crisis Management means costs incurred by a public relations or crisis management consultant.

Regulatory Proceeding means a request for information, civil investigative demand, or civil proceeding commenced by service of a complaint or similar proceeding brought by or on behalf of a governmental entity.

Security & Privacy Liability means a Claim arising from a breach of Privacy Law.

Voluntary Notifications means notifications not require by law.

Cyber Liability Supplementary Material

What is Cyber Liability Insurance?

- Cyber Liability Insurance is an insurance policy triggered by unauthorized (malicious or accidental) access and/or disclosure of personal information, known as a "breach event."
- Once triggered, the policy is designed to provide experts to help respond to and resolve a breach event, and pay the direct notification costs associated with a breach event.
- Ultimately, should a third-party sue or make a demand for financial damages against the Fund, the policy also provides liability protection insurance to provide defense, settlement, and judgment coverage.

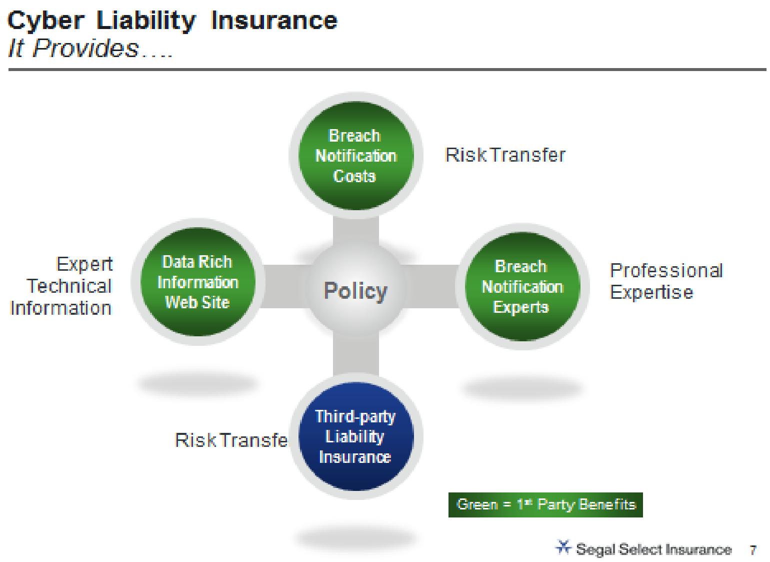
For a significant breach event, which involves Personal Identifiable Information (PII) or Protected Health Information (PHI) that is lost, stolen, or misplaced *without* recovery, or inadvertently *disclosed*, cyber liability insurance provides valuable benefits.

What does it provide?

Cyber Liability policies provide several benefits, which are summarized in the following graphic:

1. Expert Breach Notification Teams

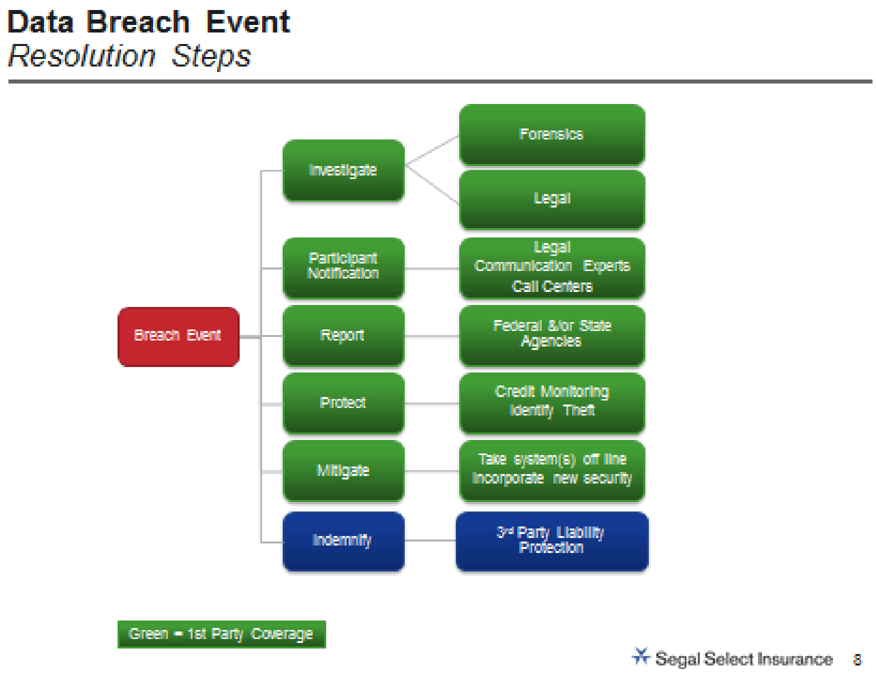
In the event of a breach, prompt, professional reaction is critical. Cyber liability insurance provides a full spectrum of expert, seasoned, professional vendors that can help a plan efficiently and effectively deal with this complex process. The team is available 24/7/365 and can be initiated via a toll free telephone number.



2. Coverage for Incurred Breach Notification Costs

Even in the simplest of breaches, there will be costs. In the simplest case, these costs may be minimal; in a complex case, they can be significant. Cyber liability will pay these costs up to the policy's purchased limits of liability. If a breach event falls within the policy's deductible, the insurer's negotiated (discounted) rate structure still applies for these services. Since engaging expert services in a crisis scenario is rarely inexpensive, this discounted rate structure can be very cost effective.

To see why breach notification costs can be so expensive, consider the following chart, which identifies the major steps required following a breach event. In the simplest case, these steps may be simplified; in a significant case, they can be very complex and expensive.



In reviewing this chart, an important consideration is whether ERISA's preemption will apply. While this is a legal question, in 2011, an ERISA Advisory Council regarding Privacy and Security said in part:

> "ERISA does not directly address whether and how employee benefit plans should protect PII (personal identifiable information) of participants (and beneficiaries) of retirement benefit plans. There has not been any jurisprudence concerning the potential of ERISA preemption of state laws concerning PII. ERISA's preemption provision may not reach many of these state laws. Consequently, plans have to comply with many of these state laws including SSN disclosure laws because there are no overall federal issued guidelines. Thus, the Council believes that as state laws are developed in the area of privacy of financial data and other PII, retirement plan administrators will need to be mindful of these laws and adjust their administrative practices accordingly."

To the extent ERISA preemption may not apply, plans may/will be required to comply with the breach notification laws of each state where its members are resident. Currently, 47 states have specific breach notification laws.

3. Expert Technical Information

Our insurer's make available to their insureds websites dedicated to cyber liability. These websites contain articles, statutory law, forms & templates, sample policies (such as an information security policy), loss scenarios, and other relevant. For both your plan's IT staff and legal counsel, these websites can be a valuable information and research asset.

These three services are neither covered nor intended to be covered by any other insurance policy.

4. Other Reasons to Buy Cyber Liability Insurance

- Cyber liability and the risk of a cyber breach event are not going to go away.
- Despite maintaining the very best and most current industry software, it is impossible to fully eliminate the risk of a cyber breach event.
- A significant percent of cyber breach events result from either negligence or acts by disgruntled employees. No security software can fully protect a Plan from these exposures.
- Cyber laws and regulations will get stricter over time.
- Cyber breach costs will likely escalate rather than decrease.
- The Ponemon Institute annually surveys the cost of cyber breach events. Even discounting for costs not related to an ERISA benefit plan, its 2012 survey indicates a significant cyber breach may easily cost between $25 - $75 per record.
- Cyber breach costs can create significant cash flow problems and, in the worst case, trigger sales of securities in an adverse market.

5. Third Party Liability

Finally, in addition to these benefits, cyber liability insurance also offers Third Party Liability. This is similar to and may overlap with a plan's fiduciary liability insurance. This may be duplicative or provide extra liability insurance. In our opinion, it should not be a priority factor in the decision whether or not to purchase cyber liability insurance.

Notice of Claim Provisions

The policy language requires that the carrier be notified as soon as practicable. In at least one policy, notice must be within sixty (60) days of knowledge by any of the insured's executive management. As HIPAA or state notification provisions may also impose a strict reporting time-line, and since coverage may be sought for the claim notification expenses, giving timely notice to the carrier should be obvious. If any subsequent claims are initiated by a person or entity against an insured, make sure that notice is also provided to the carrier as soon as possible. Once notice is provided, the policies will also require written notice of any expenses incurred. Again, at least one carrier imposes a sixty (60) day notice of any incurred expenses and a six (6) month notice for a detailed "proof of loss."

Failure to provide adequate and timely notice could jeopardize coverage under the policy. If a claim should occur, please forward all documents, via certified or overnight mail, or attached to an e-mail, to us for transmittal to the carrier. If you are using e-mail, please forward the e-mail to claims@segalsi.com.

Please call us if you need assistance or have any questions with regard to giving notice to the carrier. Notice must be in accordance with the policy's terms and conditions and must be sent to a designated address. **Disclosure in an application does not meet these terms and conditions.**

Segal Select Insurance Services Scope of Services and Compensation

Segal Select Insurance Services provides insurance brokerage services. For these services, Segal Select is primarily compensated through commissions paid by the insurance carriers. Annually, Segal Select discloses to each client, in writing, the amount of commissions we received during the prior year for that client. For a more detailed description of Segal Select's scope of services and its compensation arrangements, please use the following hyperlink http://www.segalsi.com and then click on the section entitled "Services and Compensation."

CORE PRODUCTS

Segal Select Insurance

Segal Select Insurance has a long history in obtaining insurance policies that offer broad coverage and competitive premiums. We focus on four main products:

Fiduciary Liability Insurance

ERISA allows for the purchase of fiduciary liability insurance to cover both the plan and its fiduciaries for lawsuits alleging a breach of fiduciary duty.

Cyber Liability Insurance (CLI)

If personal information is not properly protected, mandatory reporting requirements may apply. CLI provides limits of liability that can help pay the cost of notification, coverage for other associated costs and liability insurance protection should a lawsuit occur.

Fidelity Bonds

ERISA requires that every fiduciary of an employee benefit plan and every person who handles plan funds be bonded. These bonds cover the plan from loss of assets due to fraud or dishonesty.

Employment Practice Liability Insurance (EPLI)

Numerous federal and state laws address and identify illegal employment practices, such as discrimination. EPLI is designed to cover the defense, settlement and judgment costs.

Multiemployer Focus

Segal Select brokers over 1,200 Taft-Hartley plans—more than any other retail broker in the multiemployer field. We have been offering brokerage services since ERISA was enacted in 1975 and we are continuously involved in evolving the scope of coverage afforded by these insurance policies.

Our Services

- Policy review, analysis and comparisons
- Market strategy and proposed coverage specifications
- Coverage negotiations, including underwriting meetings
- Invoicing, premium collection and remittance to insurer
- Claims processing and follow-up
- Benchmarking for premium and limit of liability analysis

WHY SEGAL SELECT INSURANCE?

- **Extensive experience.**
- **Excellent client service.**
- **Unparalleled expertise.**
- **Comprehensive services.**
- **Client education and advocacy.**

To learn more about Segal Select Insurance Services, visit our website at www.segalsi.com or call Diane R. McNally, Senior Vice President, Senior Consultant and Principal, at 212.251.5146.